

Internal Revenue Service
memorandum
CC:WR:PNW:SEA

Date: JAN 7 1999

To: Examination Division
Attn: [REDACTED], Group Manager
Exam Group [REDACTED]
M/S [REDACTED]

From: District Counsel
Seattle M/S W670

Subject: [REDACTED]
Financial Privacy Issue

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You advised us this week that the agents retrieving information relevant to the issue whether the taxpayer is entitled to a bad debt deduction have been notified that certain information they are seeking is unavailable to the Service. The information has been sought informally by means of written

requests for the account records. The banks from whom the information is sought cite the "bank privacy act" in support of their position that they will not provide third party account information to the Service.

Although we do not have detailed facts concerning the information requests, we will provide you with preliminary information about the effect of the Right to Financial Privacy Act (hereinafter "Act"), 12 U.S.C. 3401 et seq. on the ability of the Service to retrieve financial records of a bank customer. Financial records within the context of the Act means copies or information known to have been received from any record held by a financial institution pertaining to a customer's relationship with the financial institution. 12 U.S.C. § 3401(2). With certain exceptions, no government authority may have access to or obtain copies of financial records of a customer from any financial institution. Significantly, section 3413 provides that nothing in the Act prohibits the disclosure of financial records in accordance with the procedures authorized by Title 26. Thus, the bank is in error when it claims that the Act precludes the Service from retrieving the financial records by means of an administrative summons. See, *King v. U.S.*, 684 F. Supp. 1038 (D. Neb., 1987).

The bank is correct in declining to provide financial records merely in response to an informal request. In *Neece v. U.S.*, 922 F.2d 578 (10th Cir. 1990), the court held that the Service was not exempt under section 3413(c) merely because the financial institution voluntarily chose to allow the Service to examine financial records pertaining to a taxpayer. The exemption under section 3413(c) refers to the procedures in Title 26 which arguably contemplates the summons procedures under section 7602 for obtaining information. The courts have permitted the Service to receive the financial information only where the Service has issued a summons. As the court in *Neece* noted, the customer relying on the right to privacy under the Act believes his records are secure from IRS intrusion absent notice and an opportunity to challenge the access to those records. That right would be nullified if the bank could unilaterally decide to cooperate with the IRS without a summons.

If you have questions about the Act and its interplay with Title 26, please call the undersigned.

blc/c

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